

REMARKS

Claims 1-14 and 21 are pending in the application. Claims 1-10 and 21 have been rejected. Claims 11-14 have been allowed. Claims 15-20 have been cancelled. No new matter has been added.

Indication of Allowable Subject Matter

Applicants would like to thank the Examiner for indicating the claims 11-14 are allowable.

Amendment to the Claims

Previously withdrawn claims 15-20 have been cancelled as requested by the Examiner.

Claim Rejections – 35 USC § 102

Claims 1-7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Becker (U.S. Patent No. 2,248,054). Claims 1-4, 7 and 8 are rejected under 35 U.S.C 102(b) as being anticipated by Lutz (U.S. Patent No. 6,183,472). Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Torrie (U.S. Patent No. 5,667,513). Applicants respectfully traverse the rejections.

Claims 1-7, 9 and 10

Claim 1 is independent. Claims 2-7, 9, and 10 depend from claim 1 and therefore incorporate each and every element of claim 1.

Applicants respectfully disagree with the Examiner as to what is disclosed in Becker. Becker secures an already rigid screw onto the end of the driver. Applicants respectfully submit that Becker does not disclose rigidifying the implant as set forth in the present invention. As discussed previously, modern implants are often configured so that the head portion of the implant is pivotable in all direction relative to the shaft portion of the implant (Also see Fig 5 and related description). Because of these movable portions the implants can be difficult to

handle thus the components of the implant must be made rigid relative to each other. Applicants pointed out this aspect to highlight the recited functionality of the claims that distinguish them from the Becker reference. Applicants direct The Examiner to page 2, the first full paragraph, where it recites “To insert and remove the screw, the components of the implant must be made rigid relative to each other..” and to page 10, the first full paragraph, where it recites “Then, the user distract the implant using the instrument 10, to create a rigid assembly, in which the shaft portion is fixed relative to the head portion, that can be screwed into bone.” This concept of rigidifying, in which the shaft portion of the implant is fixed relative to the head portion, is not disclosed or even considered in Becker. As such Becker fails to disclose each and every element of claims 1-7, 9 and 10.

Therefore, in view of the arguments set forth above, Applicants respectfully submit that claims 1-7, 9 and 10 are not anticipated by Becker and request that the rejection under 35 U.S.C. 102(b) be withdrawn and the claims passed to issuance.

Claims 1-4, 7 and 8

Claim 1 is independent. Claims 2-4, 7, and 8 depend from claim 1 and therefore incorporate each and every element of claim 1.

Applicants respectfully disagree as to what is disclosed by Lutz. Lutz does not disclose an engagement mechanism for selectively engaging a first portion of the implant, and a shaft movable relative to the engagement mechanism for selectively engaging a second portion of the implant to rigidify the implant and for actuating the engagement mechanism to engage with the first portion as set forth in the claim 1, of which claims 2-4, 7, and 8 depend.

As discussed previously, Lutz is directed to a pedicle screw and assembly aid that is used to insert an elongated rod into the head of the screw. The claw sections 64 and 66 on arms 60 and 62 are designed to engage recesses 22 and 24 on pedicle screw 10. A rod 76 placed between the arms 60 and 62 as seen in Figure 2 can then be guided into receiver 34 of the screw 10 by the claws 64 and 66 pulling the screw and the sleeve 42 pushing the rod 76. This is not the same as what is claimed in the present invention. Lutz does not disclose engaging a first and second

portion of the implant to rigidify the implant as set forth in the present invention. Thus Lutz fails to disclose each and every element of claims 1-4, 7, and 8.

Therefore, in view of the arguments set forth above, Applicants respectfully submit that claims 1-4, 7, and 8 are not anticipated by Lutz and request that the rejection under 35 U.S.C. 102(b) be withdrawn and the claims passed to issuance.

Claim 21

Applicants respectfully disagree with the Examiner as to what is disclosed by Torrie. Applicants submit that Torrie fails to disclose each and every element of claim 21. Specifically, Torrie fails to disclose a screw driver for a polyaxial screw having a head portion movably mounted to a shaft portion and more specifically Torrie fails to disclose a shaft for selectively engaging the shaft portion of the polyaxial screw to fix the shaft portion relative to the head portion.

The Examiner seems to suggest that the recitation in the preamble that the screwdriver is for polyaxial screw having a head portion movably mounted to a shaft portion carries no weight. Applicants respectfully disagree. The head and shaft portions of the screw are referenced in the body of the claim. Specifically the shaft of the screwdriver is movable relative to the retractable tabs for selectively engaging the shaft portion of the polyaxial screw *to fix the shaft portion relative to the head portion*. The shaft portion of the screw needs to be fixed relative to the head portion because as the head portion is movably mounted to the shaft portion as previously set forth.

Torrie is directed to a soft tissue anchor delivery system. Torrie does not deal with polyaxial screws having a head portion movably mounted to a shaft portion. As such, Torrie also fails to address fixing the shaft portion relative to the head portion. Thus Torrie fails to disclose each and every element of claim 21.

Therefore, in view of the arguments set forth above, Applicants respectfully submit that claim 21 is not anticipated by Torrie and request that the rejection under 35 U.S.C. 102(b) be withdrawn and the claim passed to issuance.

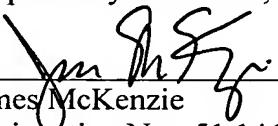
CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Dated: August 31, 2006

Respectfully submitted,

By


James McKenzie

Registration No.: 51,146
LAHIVE & COCKFIELD, LLP
28 State Street
Boston, Massachusetts 02109
(617) 227-7400
(617) 742-4214 (Fax)
Attorney/Agent For Applicant